

EXHIBIT 9

JS-6

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NANCY CABIBI and PHIL CABIBI,

Plaintiffs,

V.

AVON PRODUCTS, INC., et al.

Defendants.

Case No.: CV 19-03037-CJC (JCx)

**ORDER GRANTING PLAINTIFFS'
EX PARTE APPLICATION FOR
REMAND [Dkt. 13]**

I. INTRODUCTION & BACKGROUND

This action is one of thousands of personal injury lawsuits filed in state courts across the country alleging injury and wrongful death caused by exposure to asbestos from the talc used in Johnson & Johnson's baby powder products. On June 15, 2017, Plaintiffs Nancy Cabibi and Phil Cabibi filed this negligence and strict products liability

1 action in Los Angeles County Superior Court against Defendants Johnson & Johnson and
 2 Johnson & Johnson Consumer, Inc. (collectively, “Johnson & Johnson”), Johnson &
 3 Johnson’s sole talc supplier, Imerys Talc America, Inc. (hereinafter “Imerys”), and
 4 several other entities. (Dkt. 1 Ex. A [Complaint].)¹ Plaintiffs filed the lawsuit two
 5 months after Mrs. Cabibi was diagnosed with malignant mesothelioma, a fatal and
 6 debilitating cancer caused by exposure to asbestos. Mrs. Cabibi alleges that her exposure
 7 to asbestos through her use of Johnson & Johnson’s talc products caused her to develop
 8 cancer.

9
 10 This case has been substantially litigated in Los Angeles County Superior Court
 11 for the last two years. It is part of a statewide coordinated effort to manage the multitude
 12 of state court proceedings in which plaintiffs have claimed personal injury and wrongful
 13 death resulting from exposure to asbestos. Plaintiffs were scheduled to proceed to trial
 14 against Johnson & Johnson and Imerys on May 14, 2018, but the trial was continued.
 15 (Dkt. 13-2 [Declaration of Stuart J. Purdy] ¶ 4.) Imerys was dismissed from the action on
 16 February 13, 2019, leaving Johnson & Johnson as the sole remaining defendant. (*Id.*
 17 ¶ 5.) Plaintiffs’ trial against Johnson & Johnson was rescheduled for May 6, 2019, with a
 18 final status conference set for April 22, 2019. (*Id.* ¶¶ 4, 7.) Both parties evinced a clear
 19 intent to proceed with the trial as planned. In the weeks leading up to the final status
 20 conference, Johnson & Johnson filed jury instructions, a juror questionnaire, a proposed
 21 verdict form, and numerous motions in limine. *See Cabibi, et al. v. Avon Products, Inc.*,
 22 Case No. BC 665257 (L.A. Cty. Super. Ct.).

23
 24 On April 18, 2019, days before the final status conference, Johnson & Johnson
 25 removed Plaintiffs’ action to this Court on the ground that it is “related to” Imerys’s
 26

27 ¹ Plaintiffs also named as defendants Avon Products, Inc., Brenntag North America, Inc., Brenntag
 28 Specialties, Inc., Colgate-Palmolive Company, Coty, Inc., Cyprus Amax Minerals Company, Davila,
 Inc., Pfizer Inc., Valeant Pharmaceuticals International, Valeant Pharmaceuticals North America LLC,
 Whittaker Clark & Daniels, Inc., and Does 1 through 450.

1 pending bankruptcy proceeding. (Dkt. 1 [Notice of Removal].) On February 13, 2019,
2 Imerys and its affiliates filed for Chapter 11 bankruptcy in the United States Bankruptcy
3 Court for the District of Delaware. *See In re Imerys Talc America, et al.*, Case No. 19-
4 10289-LSS (Bankr. D. Del.). The same day Johnson & Johnson removed Plaintiffs'
5 action to this Court, it filed a motion in the United States District Court for the District of
6 Delaware to fix venue for claims related to Imerys's bankruptcy. (*See* Dkt. 1-3 Ex. C
7 [Johnson & Johnson's Motion to Fix Venue for Claims Related to Imerys's Bankruptcy].)
8 Through that motion, Johnson & Johnson seeks to consolidate the thousands of state
9 court cases filed against it in the District of Delaware. Although Imerys was dismissed
10 from Plaintiffs' case months ago, Johnson & Johnson argues that their case—and the
11 many state proceedings like it—are related to Imerys's bankruptcy proceeding because
12 Johnson & Johnson's supply agreements with Imerys contain contractual
13 indemnifications and other liability-sharing agreements triggered by personal injury
14 claims.

15
16 When Johnson & Johnson removed Plaintiffs' action to this Court, Plaintiffs lost
17 their imminent trial date. With Mrs. Cabibi's health rapidly declining, Plaintiffs filed the
18 instant *ex parte* application to remand the action to state court so they may proceed to
19 trial. (Dkt. 13.) Johnson & Johnson opposes the application. (Dkt. 20.) For the
20 following reasons, Plaintiffs' application is **GRANTED**.

21
22 **II. ANALYSIS**

23
24 Federal courts are courts of limited jurisdiction. *Kokkonen v. Guardian Life Ins.*
25 *Co. of Am.*, 511 U.S. 375, 377 (1994). As such, federal courts are presumed to lack
26 jurisdiction in a particular case "unless the contrary affirmatively appears." *Stock W.,*
27 *Inc. v. Confederated Tribes of the Colville Reservation*, 873 F.2d 1221, 1225 (9th Cir.
28 1989). Where, as here, a defendant removes the action to federal court, the burden of

1 establishing subject matter jurisdiction falls on the defendant. *Gaus v. Miles, Inc.*, 980
 2 F.2d 564, 566 (9th Cir. 1992). Johnson & Johnson asserts that this Court has subject
 3 matter jurisdiction over Plaintiffs' state law claims because they are "related to" Imerys's
 4 pending bankruptcy proceeding in Delaware.

5

6 Bankruptcy jurisdiction is governed by 28 U.S.C. § 1334, which vests district
 7 courts with "original but not exclusive jurisdiction of all civil proceedings arising under
 8 title 11, or arising in or related to cases under title 11." 28 U.S.C. § 1334(b). A party
 9 may remove any claim in a civil action to the district court in which the civil action is
 10 pending, if the district court has jurisdiction over the claim pursuant to Section 1334(b).
 11 *Id.* § 1452(a). Once a claim is removed pursuant to Section 1452(a), the district court to
 12 which the claim is removed may remand the claim "on any equitable ground." *Id.*
 13 § 1452(b). This is true even if the claim falls within the district court's subject matter
 14 jurisdiction under Section 1334(b). *See, e.g., TIG Ins. Co. v. Smolker*, 264 B.R. 661,
 15 666–67 (Bankr. C.D. Cal. 2001). An order remanding an action pursuant to Section
 16 1452(b) "is not reviewable by appeal or otherwise" by the court of appeals or Supreme
 17 Court. 28 U.S.C. § 1452(b).

18

19 Section 1452(b)'s "'any equitable ground' remand standard is an unusually broad
 20 grant of authority." *McCarthy v. Prince*, 230 B.R. 414, 417 (B.A.P. 9th Cir. 1999). In
 21 determining whether equitable grounds exist to remand an action removed under Section
 22 1452(a), courts consider several factors, including the extent to which state law issues
 23 predominate over bankruptcy issues, whether the applicable law involves difficult or
 24 unsettled issues, the degree of relatedness of the state proceeding to the bankruptcy case,
 25 whether any basis for jurisdiction other than Section 1334 exists, comity and respect for
 26 state law decision-making capabilities, the likelihood that either party is engaging in
 27 forum shopping, the existence of a right to a jury trial, the burden on the bankruptcy
 28 court's docket, the feasibility of allowing judgments to be entered in state court while

1 leaving enforcement to the bankruptcy court, the impact of remand on the administration
2 of the debtor's bankruptcy case, and the possibility of prejudice to the parties in the
3 action. *See In re Cedar Funding, Inc.*, 419 B.R. 807, 820 n.18 (B.A.P. 9th Cir. 2009)
4 (citing *In re Enron Corp.*, 296 B.R. 505, 508 n.2 (Bankr. C.D. Cal. 2003)). "Because
5 Section 1452(b) affords 'an unusually broad grant of authority,' any one of the relevant
6 factors may provide a sufficient basis for equitable remand." *Stichting Pensioenfonds*
7 *ABP v. Countrywide Fin. Corp.*, 447 B.R. 302, 310 (Bankr. C.D. Cal. 2010) (citation
8 omitted).

9
10 The relevant factors weigh strongly in favor of granting equitable remand here.
11 This is a state law action at its core. It is part of a coordinated proceeding of similar
12 personal injury and wrongful death lawsuits in Los Angeles County Superior Court.
13 Plaintiffs assert claims for negligence and strict products liability for injuries arising out
14 of Mrs. Cabibi's alleged exposure to asbestos from Johnson & Johnson's talc products.
15 Those claims have not only been pending in state court for nearly two years—they have
16 been substantially litigated. The parties have twice prepared for trial. Johnson &
17 Johnson deposed Plaintiffs' expert and engaged in significant pretrial motion practice
18 preceding the trial that was scheduled for May 6, 2019. Other than Johnson & Johnson's
19 theory of "related to" jurisdiction under Section 1334(b), there is no basis for removal or
20 federal jurisdiction. And Johnson & Johnson's basis for "related to" jurisdiction appears
21 tenuous. Imerys is not a party to Plaintiffs' action. Accordingly, Imerys's connection
22 rests solely on its contractual indemnification and insurance-sharing agreements with
23 Johnson & Johnson. On these facts, comity favors remand. *See In re Enron Corp.*, 296
24 B.R. at 509 ("Comity dictates that California courts should have the right to adjudicate
25 the exclusively state law claims involving California-centric plaintiffs and California-
26 centric transactions.").

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1 Plaintiffs' right to a jury trial would be substantially prejudiced if this action is not
 2 remanded. Although Imerys filed for bankruptcy on February 13, 2019, Johnson &
 3 Johnson waited until the eve of trial to remove the action to this Court. In its motion to
 4 fix venue filed in the Delaware District Court, Johnson & Johnson represented that it was
 5 not seeking to remove cases where "trial is ongoing or scheduled to begin." (See Dkt. 1-4
 6 Ex. C at 7 n.4.) Contrary to that representation, Johnson & Johnson removed this action
 7 four days before the parties' pretrial conference. The parties at that point had conducted
 8 discovery, prepared expert disclosures, and filed trial documents in accordance with
 9 California state law and procedure. By all counts, they were ready to go to trial. If this
 10 action is transferred to Delaware, all of this effort will have to be duplicated. Trial will
 11 be delayed by months or even years. Mrs. Cabibi does not have months or years.
 12 Johnson & Johnson's removal has risked depriving her of her day in court.

13
 14 Johnson & Johnson and Imerys, by contrast, are not likely to suffer serious
 15 prejudice if this action is remanded. Adjudication of Plaintiffs' California state law
 16 claims against Johnson & Johnson in California state court will not significantly hamper
 17 the administration of Imerys's bankruptcy estates. Plaintiffs assert no claims against
 18 Imerys and Imerys asserts no claims against Plaintiffs. If Johnson & Johnson is entitled
 19 to contribution or indemnity from Imerys, it can assert a claim against Imerys's estates in
 20 the Delaware Bankruptcy Court. Since Imerys is not a party to this action, it will not be
 21 precluded from raising any defenses it may have against Johnson & Johnson.²

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² Johnson & Johnson alternatively argues that this Court should abstain from ruling on Plaintiffs'
 25 application for remand so the Delaware District Court may first rule on the motion to fix venue.
 26 Johnson & Johnson relies on 28 U.S.C. § 1337(b)(5), which states that "personal injury tort and wrongful
 27 death claims shall be tried in the district court in which the bankruptcy case is pending, or in the district
 28 court in the district in which the claim arose, as determined by the district court in which the bankruptcy
 case is pending." This provision governs venue, not jurisdiction. See *Stern v. Marshall*, 564 U.S. 462,
 478–79 (2011). The issue before the Court is whether removal jurisdiction is proper. Johnson &
 Johnson offers no authority for the proposition that the Court cannot rule on Plaintiffs' application for
 remand before the Delaware District Court rules on the motion to fix venue.

1 Johnson & Johnson argues that the Court should decline to remand this action to
2 allow the “orderly transfer” of the thousands of state actions against it to the Delaware
3 District Court. According to Johnson & Johnson, transfer will provide Plaintiffs “the best
4 chance for an efficient adjudication.” (Dkt. 20 [Opposition] at 24.) The Court disagrees.
5 Johnson & Johnson deprived Plaintiffs of their best chance for an efficient adjudication
6 when it removed this action weeks before the parties’ scheduled trial. Equitable
7 considerations compel the Court to return Plaintiffs’ case to state court.³

8

9 **III. CONCLUSION**

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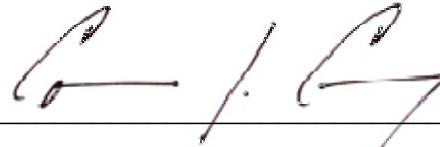
11 For the foregoing reasons, Plaintiffs’ *ex parte* application for remand is
12 **GRANTED**. This action is hereby remanded to Los Angeles County Superior Court.

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16 DATED: May 3, 2019



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18 CORMAC J. CARNEY

19 UNITED STATES DISTRICT JUDGE

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³ Plaintiffs offer several other arguments in support of their application for remand. For instance, they argue that Johnson & Johnson’s removal was untimely and that Plaintiffs’ claims are subject to mandatory abstention. Because the Court finds that equitable remand is proper pursuant to 28 U.S.C. § 1452(b), it need not address Plaintiffs’ remaining grounds for removal.

JS-6

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

CAROLYN WEIRICK and ELVIRA GRACIELA ESCUDERO LORA,

Plaintiffs,

V.

**BRENNTAG NORTH AMERICA,
INC., et al.,**

Defendants.

Case No.: CV 19-03036-CJC (JCx)

**ORDER GRANTING PLAINTIFFS'
EX PARTE APPLICATION FOR
REMAND [Dkt. 10]**

I. INTRODUCTION & BACKGROUND

This action is one of thousands of personal injury lawsuits filed in state courts across the country alleging injury and wrongful death caused by exposure to asbestos from the talc used in Johnson & Johnson’s baby powder products. On April 4, 2017, Plaintiff Carolyn Weirick filed this negligence and strict products liability action in Los

1 Angeles County Superior Court against Defendants Johnson & Johnson and Johnson &
 2 Johnson Consumer, Inc. (collectively, “Johnson & Johnson”), Johnson & Johnson’s sole
 3 talc supplier, Imerys Talc America, Inc. (hereinafter “Imerys”), and several other entities.
 4 (Dkt. 1 Ex. A [Complaint]; *id.* at 35 [Operative First Amended Complaint, hereinafter
 5 “FAC”].)¹ Mrs. Weirick filed the lawsuit less than two months after she was diagnosed
 6 with malignant mesothelioma, a fatal and debilitating cancer caused by exposure to
 7 asbestos. She alleges that her exposure to asbestos through her and her mother’s use of
 8 Johnson & Johnson’s talc products caused her cancer.

9
 10 This case has been substantially litigated in Los Angeles County Superior Court
 11 for the last two years. It is part of a statewide coordinated effort to manage the multitude
 12 of state court proceedings in which plaintiffs have claimed personal injury and wrongful
 13 death resulting from exposure to asbestos. On July 31, 2018, Mrs. Weirick and her
 14 spouse (collectively, “Plaintiffs”) went to trial on their negligence and strict products
 15 liability claims against Johnson & Johnson and Imerys. (Dkt. 10-2 [Declaration of
 16 Jordan Blumenfeld-James] ¶ 4.) Mid-trial on September 14, 2018, Plaintiffs resolved
 17 their claims as to Imerys and dismissed it from the action. The trial proceeded as to
 18 Johnson & Johnson but ultimately concluded in a mistrial due to a hung jury. Plaintiffs
 19 and Johnson & Johnson scheduled a retrial for April 29, 2019, with a final status
 20 conference set for April 22, 2019. Both parties evinced a clear intent to proceed with the
 21 retrial as planned. In the weeks leading up to the final status conference, Johnson &
 22 Johnson filed jury instructions, a juror questionnaire, witness list, statement of the case,
 23 and numerous motions in limine. *See Weirick, et al. v. Brenntag North America, et al.*,
 24 Case No. BC 656425 (L.A. Cty. Super. Ct.).

25
 26 ¹ Plaintiff also named as defendants Brenntag North America, Inc., Brenntag Specialties, Inc., Cal Oaks
 27 Pharmacy, Inc., Chanel, Inc., Cyprus Amax Minerals Company, Valeant Pharmaceuticals International
 28 Corporation, Valeant Pharmaceuticals North America LLC, Whittaker Clark & Daniels, Inc., and Does 1
 through 450. On July 13, 2017, she filed the operative First Amended Complaint adding her spouse,
 Elvira Graciela Escudero Lora, as a plaintiff to the action. (*See* FAC.)

1 On April 18, 2019, days before the final status conference, Johnson & Johnson
2 removed Plaintiffs' action to this Court on the ground that it is "related to" Imerys's
3 pending bankruptcy proceeding. (Dkt. 1 [Notice of Removal].) On February 13, 2019,
4 Imerys and its affiliates filed for Chapter 11 bankruptcy in the United States Bankruptcy
5 Court for the District of Delaware. *See In re Imerys Talc America, et al.*, Case No. 19-
6 10289-LSS (Bankr. D. Del.). The same day Johnson & Johnson removed Plaintiffs'
7 action to this Court, it filed a motion in the United States District Court for the District of
8 Delaware to fix venue for claims related to Imerys's bankruptcy. (*See* Dkt. 1-4 Ex. C
9 [Johnson & Johnson's Motion to Fix Venue for Claims Related to Imerys's Bankruptcy].)
10 Through that motion, Johnson & Johnson seeks to consolidate the thousands of state
11 court cases filed against it in the District of Delaware. Although Imerys was dismissed
12 from Plaintiffs' case months ago, Johnson & Johnson argues that their case—and the
13 many state proceedings like it—are related to Imerys's bankruptcy proceeding because
14 Johnson & Johnson's supply agreements with Imerys contain contractual
15 indemnifications and other liability-sharing agreements triggered by personal injury
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18 When Johnson & Johnson removed Plaintiffs' action to this Court, Plaintiffs lost
19 their imminent trial date. With Mrs. Weirick's health rapidly declining, Plaintiffs filed
20 the instant *ex parte* application to remand the action to state court so they may proceed to
21 trial. (Dkt. 10.) Johnson & Johnson opposes the application. (Dkt. 13.) For the
22 following reasons, Plaintiffs' application is **GRANTED**.

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2 1989). Where, as here, a defendant removes the action to federal court, the burden of
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5 matter jurisdiction over Plaintiffs' state law claims because they are "related to" Imerys's
6 pending bankruptcy proceeding in Delaware.

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8 Bankruptcy jurisdiction is governed by 28 U.S.C. § 1334, which vests district
9 courts with "original but not exclusive jurisdiction of all civil proceedings arising under
10 title 11, or arising in or related to cases under title 11." 28 U.S.C. § 1334(b). A party
11 may remove any claim in a civil action to the district court in which the civil action is
12 pending, if the district court has jurisdiction over the claim pursuant to Section 1334(b).
13 *Id.* § 1452(a). Once a claim is removed pursuant to Section 1452(a), the district court to
14 which the claim is removed may remand the claim "on any equitable ground." *Id.*
15 § 1452(b). This is true even if the claim falls within the district court's subject matter
16 jurisdiction under Section 1334(b). *See, e.g., TIG Ins. Co. v. Smolker*, 264 B.R. 661,
17 666–67 (Bankr. C.D. Cal. 2001). An order remanding an action pursuant to Section
18 1452(b) "is not reviewable by appeal or otherwise" by the court of appeals or Supreme
19 Court. 28 U.S.C. § 1452(b).

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21 Section 1452(b)'s "'any equitable ground' remand standard is an unusually broad
22 grant of authority." *McCarthy v. Prince*, 230 B.R. 414, 417 (B.A.P. 9th Cir. 1999). In
23 determining whether equitable grounds exist to remand an action removed under Section
24 1452(a), courts consider several factors, including the extent to which state law issues
25 predominate over bankruptcy issues, whether the applicable law involves difficult or
26 unsettled issues, the degree of relatedness of the state proceeding to the bankruptcy case,
27 whether any basis for jurisdiction other than Section 1334 exists, comity and respect for
28 state law decision-making capabilities, the likelihood that either party is engaging in

1 forum shopping, the existence of a right to a jury trial, the burden on the bankruptcy
2 court's docket, the feasibility of allowing judgments to be entered in state court while
3 leaving enforcement to the bankruptcy court, the impact of remand on the administration
4 of the debtor's bankruptcy case, and the possibility of prejudice to the parties in the
5 action. *See In re Cedar Funding, Inc.*, 419 B.R. 807, 820 n.18 (B.A.P. 9th Cir. 2009)
6 (citing *In re Enron Corp.*, 296 B.R. 505, 508 n.2 (Bankr. C.D. Cal. 2003)). "Because
7 Section 1452(b) affords 'an unusually broad grant of authority,' any one of the relevant
8 factors may provide a sufficient basis for equitable remand." *Stichting Pensioenfonds ABP v. Countrywide Fin. Corp.*, 447 B.R. 302, 310 (Bankr. C.D. Cal. 2010) (citation
9 omitted).

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12 The relevant factors weigh strongly in favor of granting equitable remand here.
13 This is a state law action at its core. It is part of a coordinated proceeding of similar
14 personal injury and wrongful death lawsuits in Los Angeles County Superior Court.
15 Plaintiffs assert claims for negligence and strict products liability for injuries arising out
16 of Mrs. Weirick's alleged exposure to asbestos from Johnson & Johnson's talc products.
17 Those claims have not only been pending in state court for two years—they have been
18 substantially litigated and tried. The parties went to trial on July 31, 2018 and following
19 a hung jury, scheduled a retrial for April 29, 2019. Other than Johnson & Johnson's
20 theory of "related to" jurisdiction under Section 1334(b), there is no basis for removal or
21 federal jurisdiction. And Johnson & Johnson's basis for "related to" jurisdiction appears
22 tenuous. Plaintiffs dismissed Imerys from this action five months before Imerys filed for
23 bankruptcy. Accordingly, Imerys's connection to the instant action rests solely on its
24 contractual indemnification and insurance-sharing agreements with Johnson & Johnson.
25 On these facts, comity favors remand. *See In re Enron Corp.*, 296 B.R. at 509 ("Comity
26 dictates that California courts should have the right to adjudicate the exclusively state law
27 claims involving California-centric plaintiffs and California-centric transactions.").

28

1 Plaintiffs' right to a jury trial would be substantially prejudiced if this action is not
 2 remanded. Although Imerys filed for bankruptcy on February 13, 2019, Johnson &
 3 Johnson waited until the eve of trial to remove the action to this Court. In its motion to
 4 fix venue filed in the Delaware District Court, Johnson & Johnson represented that it was
 5 not seeking to remove cases where "trial is ongoing or scheduled to begin." (See Dkt. 1-4
 6 Ex. C at 7 n.4.) Contrary to that representation, Johnson & Johnson removed this action
 7 four days before the parties' pretrial conference. The parties at that point had conducted
 8 discovery, prepared expert disclosures, and filed trial documents in accordance with
 9 California state law and procedure. By all counts, they were ready to go to trial. If this
 10 action is transferred to Delaware, all of this effort will have to be duplicated. Trial will
 11 be delayed by months or even years. Mrs. Weirick does not have months or years.
 12 Johnson & Johnson's removal has risked depriving her of her day in court.

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 14 Johnson & Johnson and Imerys, by contrast, are not likely to suffer serious
 15 prejudice if this action is remanded. Adjudication of Plaintiffs' California state law
 16 claims against Johnson & Johnson in California state court will not significantly hamper
 17 the administration of Imerys's bankruptcy estates. Plaintiffs assert no claims against
 18 Imerys and Imerys asserts no claims against Plaintiffs. If Johnson & Johnson is entitled
 19 to contribution or indemnity from Imerys, it can assert a claim against Imerys's estates in
 20 the Delaware Bankruptcy Court. Since Imerys is not a party to this action, it will not be
 21 precluded from raising any defenses it may have against Johnson & Johnson.²

22
 23
 24 ² Johnson & Johnson alternatively argues that this Court should abstain from ruling on Plaintiffs'
 25 application for remand so the Delaware District Court may first rule on the motion to fix venue.
 26 Johnson & Johnson relies on 28 U.S.C. § 133(b)(5), which states that "personal injury tort and wrongful
 27 death claims shall be tried in the district court in which the bankruptcy case is pending, or in the district
 28 court in the district in which the claim arose, as determined by the district court in which the bankruptcy
 case is pending." This provision governs venue, not jurisdiction. See *Stern v. Marshall*, 564 U.S. 462,
 478–79 (2011). The issue before the Court is whether removal jurisdiction is proper. Johnson &
 Johnson offers no authority for the proposition that the Court cannot rule on Plaintiffs' application for
 remand before the Delaware District Court rules on the motion to fix venue.

Johnson & Johnson argues that the Court should decline to remand this action to allow the “orderly transfer” of the thousands of state actions against it to the Delaware District Court. According to Johnson & Johnson, transfer will provide Plaintiffs “the best chance for an efficient adjudication.” (Dkt. 13 [Opposition] at 24.) The Court disagrees. Johnson & Johnson deprived Plaintiffs of their best chance for an efficient adjudication when it removed this action a week before the parties’ scheduled trial. Equitable considerations compel the Court to return Plaintiffs’ case to state court.³

III. CONCLUSION

For the foregoing reasons, Plaintiffs' *ex parte* application for remand is **GRANTED**. This action is hereby remanded to Los Angeles County Superior Court.

DATED: May 3, 2019

C. J. C.

CORMAC J. CARNEY

UNITED STATES DISTRICT JUDGE

³ Plaintiffs offer several other arguments in support of their application for remand. For instance, they argue that Johnson & Johnson's removal was untimely and that Plaintiffs' claims are subject to mandatory abstention. Because the Court finds that equitable remand is proper pursuant to 28 U.S.C. § 1452(b), it need not address Plaintiffs' remaining grounds for removal.

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

JS-6

CIVIL MINUTES -- GENERAL

Case No. **CV 19-3474-JFW(RAOx)**

Date: May 6, 2019

Title: Lawrence Diess, et al. -v- Bayer Consumer Care Holdings LLC, et al.

PRESENT:

HONORABLE JOHN F. WALTER, UNITED STATES DISTRICT JUDGE

**Shannon Reilly
Courtroom Deputy**

**None Present
Court Reporter**

ATTORNEYS PRESENT FOR PLAINTIFFS:

None

ATTORNEYS PRESENT FOR DEFENDANTS:

None

PROCEEDINGS (IN CHAMBERS):

**ORDER REMANDING ACTION TO LOS ANGELES
SUPERIOR COURT**

The Court has reviewed the Notice of Removal filed by Defendants Johnson & Johnson and Johnson & Johnson Consumer, Inc. (collectively, "Defendants") on April 26, 2019. Docket No. 1. Defendants are attempting to remove an action commenced by Plaintiffs Lawrence Diess and Carol Diess (collectively, "Plaintiffs") in Los Angeles County Superior Court on May 30, 2017. Defendants assert that this Court has subject matter jurisdiction on the basis of a pending bankruptcy proceeding in the District of Delaware. See 28 U.S.C. § 1452(a).

Federal courts are courts of limited jurisdiction, having subject matter jurisdiction only over matters authorized by the Constitution and Congress. See *Bender v. Williamsport Area School District*, 475 U.S. 534, 541 (1986). "Because of the Congressional purpose to restrict the jurisdiction of the federal courts on removal, the statute is strictly construed, and federal jurisdiction must be rejected if there is any doubt as to the right of removal in the first instance." *Duncan v. Stuetzle*, 76 F.3d 1480, 1485 (9th Cir. 1996) (citations and quotations omitted). There is a strong presumption that the Court is without jurisdiction unless the contrary affirmatively appears. See *Fifty Associates v. Prudential Insurance Company of America*, 446 F.2d 1187, 1190 (9th Cir. 1990). As the parties invoking federal jurisdiction, Defendants bear the burden of demonstrating that removal is proper. See, e.g., *Gaus v. Miles*, 980 F.2d 564, 566 (9th Cir. 1992); *Emrich v. Touche Ross & Co.*, 846 F.2d 1190, 1195 (9th Cir. 1988).

28 U.S.C. § 1452(a) allows a party to "remove any claim or cause of action in a civil action to the district court for the district where such action is pending" if the district court has jurisdiction of the claim or cause of action under 28 U.S.C. § 1334. Section 1334(b) vests district courts with "original but not exclusive jurisdiction of all civil proceedings arising under title 11 or arising in or related to cases under title 11." Once a claim is removed pursuant to 28 U.S.C. § 1452(a), the court to which the claim has been removed "may remand such claim or cause of action on any

equitable ground." 28 U.S.C. § 1452(b). An order remanding an action pursuant to § 1452(b) "is not reviewable by appeal or otherwise by the court of appeals under section 158(d), 1291, or 1292 [of Title 28] or by the Supreme Court." *Id.* Section 1452(b)'s "any equitable ground" remand standard is an unusually broad grant of authority. It subsumes and reaches beyond all of the reasons for remand under nonbankruptcy removal statutes . . . At bottom, the question is committed to the sound discretion of the . . . judge." *McCarthy v. Prince*, 230 B.R. 414, 417 (B.A.P. 9th Cir. 1999).

In assessing whether "equitable grounds" exist to remand actions removed under § 1452, courts have looked to a number of factors:

These factors have included, among other things, judicial economy, comity and respect for state law decision-making capabilities, the impact that remand would have upon the orderly administration of the debtor's bankruptcy case, the effect of bifurcating claims and parties to an action and the possibilities of inconsistent results, the predominance of state law issues and nondebtor parties, and the extent of any prejudice to nondebtor parties.

In re TIG Ins. Co., 264 B.R. 661, 665–66 (Bankr. S.D. Cal. 2001) (*citing W. Helicopters, Inc. v. Hiller Aviation, Inc.*, 97 B.R. 1, 2 (E.D. Cal. 1988)). "Because Section 1452(b) affords 'an unusually broad grant of authority,' any one of the relevant factors may provide a sufficient basis for equitable remand." *Stichting Pensioenfonds ABP v. Countrywide Fin. Corp.*, 447 B.R. 302, 310 (C.D. Cal. 2010) (*quoting In re Roman Catholic Bishop of San Diego*, 374 B.R. 756, 761 (Bankr. S.D. Cal. 2007)).

In this case, Plaintiffs sued Defendants and Imerys Talc America, Inc. ("Imerys"), the talc powder supplier, in state court for allegedly exposing Plaintiff Lawrence Diess to cancer-causing talcum powder. Plaintiffs claim the talcum powder caused Plaintiff Lawrence Diess's mesothelioma. On February 13, 2019, Imerys commenced Chapter 11 bankruptcy proceedings in the United States Bankruptcy Court for the District of Delaware. Defendants argue that this case is related to that bankruptcy pursuant to 28 U.S.C. § 1334, and thus, that the Court has jurisdiction under Section 1452. Even if the Court may have jurisdiction over the action, the Court concludes that equitable grounds support remand.

Plaintiffs, California residents, commenced this action in state court on May 30, 2017. Under these circumstances, the Court concludes that it would be inequitable to require local Plaintiffs to litigate their case in an inconvenient, out-of-district federal court. Plaintiffs would be further prejudiced by the removal of this action to federal court considering this action has been developing in state court for nearly two years. Because Plaintiffs assert only California state law claims against Defendants, comity also favors remand. See *Estate of Scott v. Cervantes*, 2008 WL 11337657, at *4 (C.D. Cal. July 29, 2008) ("Where issues of state law predominate, comity . . . favors remand."); see also *McCarthy*, 230 B.R. at 418 ("State courts are, by definition, fully competent to resolve disputes governed by state law."). Finally, judicial economy supports remand. The state court has already considered these state law claims for nearly two years, so litigating this case in federal court will needlessly duplicate judicial resources.

For all of the foregoing reasons, the equities favor remanding this action. Accordingly, this

action is remanded to the Los Angeles County Superior Court.

IT IS SO ORDERED.